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No. ...-...

IN THE

Supreme Court of the United States

October Term, 1982

GOLDEN STATE TRANSIT CORPORATION d/b/a YELLOW CAB OF LOS ANGELES,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI.

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Question Presented.

Pursuant to a franchise from the City of Los Angeles, petitioner has operated the largest taxicab company in Los Angeles, California. Prior to the expiration date of petitioner's and twelve other taxicab companies' franchises, petitioner and the others made timely application for a franchise renewal. The City's Department of Transportation determined that petitioner was in full compliance with all terms and conditions of its franchise and recommended to the City's Board of Transportation that petitioner be awarded a long-term renewal. Thereafter, the City's Board of Transportation Commissioners also recommended the long-term renewal of petitioner's franchise to the Los Angeles City Council's Committee on Transportation and Traffic, which also recommended such a renewal to the City Council of Los Angeles. Yet the City Council voted to deny petitioner's franchise because of an ongoing labor dispute between petitioner and its Teamster drivers. Upon an application by petitioner for injunctive relief, the United States District Court, Central District of California, issued a preliminary injunction, inter alia, restraining and enjoining the City from terminating petitioner's franchise and from otherwise interfering with petitioner's collective bargaining with the Teamsters. On appeal by the City of Los Angeles, the Court of Appeals held that there was ample evidence to support a finding that by threatening to deny and ultimately denying renewal of petitioner's franchise, the City had deprived petitioner of an economic weapon vis-a-vis its Teamster drivers in their labor dispute. However, the Court of Appeals vacated the District Court's preliminary injunction on the grounds that the National Labor Relations Act, 29 U.S.C.

§§151-168, did not preempt the City's power to deny petitioner's application for a franchise renewal, and that petitioner was not denied due process or equal protection of the laws because the City could justify its denial of petitioner's franchise renewal application on the belatedly asserted basis of increasing the compensation of taxicab drivers and thus contributing to higher levels of taxicab service. The question presented is:

> Whether federal preemption under the Supremacy Clause, and the Equal Protection and Due Process Clauses and of the Constitution, prohibit a municipal government from substantially and irreversibly influencing and interfering with a labor dispute through an arbitrary and capricious classification that denies a fully qualified business entity, as opposed to all others similarly situated, a valuable entitlement on the basis of increasing the bargaining power and the economic condition of organized labor, and whether a federal appellate court can misapply its own legal standards to vacate a lower court's injunction that preserved the status quo between the business entity and its union employees and had thus prevented the economic ruin of the business entity pending litigation?

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GOLDEN STATE TRANSIT CORPORATION d/b/a YELLOW CAB OF LOS ANGELES,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Petitioner Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles, respectfully prays that a Writ of Certiorari be issued to review the opinion of the United States Court of Appeals for the Ninth Circuit entered on September 7, 1982. That opinion vacated a preliminary injunction issued by the United States District Court for the Central District of California which had, inter alia, restrained and enjoined the City of Los Angeles, during the pendency of the action below from terminating petitioner's franchise to operate a taxicab service in Los Angeles, California, and from interfering with petitioner's collective bargaining with its Teamster drivers.

OPINIONS BELOW.

The decision of the Court of Appeals of which petitioner seeks review is reported at 686 F.2d 758; a copy is appended hereto as Appendix A. The opinion of the District Court is

reported at 520 F.Supp. 191. In support of the injunction, which was vacated by the Court of Appeals, the District Court entered findings of fact; a copy of these findings is appended hereto as Appendix B.

JURISDICTION.

The Court of Appeals' decision was filed September 7, 1982. On September 21, 1982, petitioner filed a motion in the Court of Appeals to stay the mandate and for an enlargement of time to file a petition for rehearing, or, in the alternative, for a stay of mandate pending a petition for a Writ of Certiorari in this Court. On September 29, 1982, the Court of Appeals denied petitioner's motion for enlargement of time to file a petition for rehearing but stayed the mandate until and including October 28, 1982 so that the petitioner could file this petition. This petition is being filed within the time permitted by the Court of Appeals in its order staying the mandate and within the time permitted by 28 U.S.C. §2101. This court has jurisdiction to review the Court of Appeals' decision by writ of certiorari pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED.

The Constitutional provisions involved are:

1. Supremacy Clause, U.S. Const., art. VI, §2. (Appendix C)
2. Equal Protection Clause, U.S. Const. Amend. 14, §1. (Appendix D)
3. Due Process Clause, U.S. Const. Amend. 14, §1. (Appendix E)

STATEMENT OF THE CASE.

Since 1977, Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles ("Yellow Cab") has operated as the largest taxicab company in Los Angeles pursuant to a

franchise from the City of Los Angeles. The franchises of Yellow Cab and twelve other taxicab franchisees were due to expire on October 29, 1980. This expiration date for the franchisees was extended by the City to March 31, 1981.[1]

Yellow Cab had operated its business pursuant to a collective bargaining agreement with Teamsters Local 572. This agreement expired in October, 1980, but was renewed by interim agreements with the Teamsters until February 11, 1981. On that date, the Los Angeles City Council was scheduled to and did meet to consider whether to renew the franchises of Yellow Cab and the twelve other franchisees. Also, on that same date, Yellow Cab's Teamster drivers went on, and have remained on, strike. The dispute between Yellow Cab and its drivers concerns wages and benefits.

Yellow Cab has been engaged in extensive business operations in the City of Los Angeles and at Los Angeles International Airport, and train and bus terminals, transporting passengers who are arriving from or who are departing to various other states and countries thereby affecting interstate commerce.

Yellow Cab and the other franchisees had made timely application for renewal of their franchises. The City's Department of Transportation had determined in a report to the City's Board of Transportation that Yellow Cab was in full compliance with all terms and conditions of its franchise, and recommended a long-term renewal of that franchise. On September 4, 1980, and again on January 26, 1981, the City's Board of Transportation Commissioners also recommended long-term renewal of the Yellow Cab franchise to the City Council's Committee on Transportation and Traffic, which further recommended to the Los Angeles

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[1]Statement of the Case is based upon the findings of fact of the United States District Court, which are reproduced in full in Appendix B.

City Council that a long-term renewal franchise be granted Yellow Cab as well as other certain franchisees.

Because of the ongoing labor dispute between Yellow Cab and its Teamster drivers, the Joint Council of Teamsters on February 5, 1981, sent letters to the Mayor of Los Angeles and all City Council members advising them of the existence of the labor dispute.

At the City Council meeting of February 11, 1981, to consider whether to grant taxicab franchises to Yellow Cab and the other twelve applicants, the Council considered a report of its Committee on Transportation and Traffic, dated February 2, 1981, which recommended, inter alia, full-term renewals of four years for six franchisees, including Yellow Cab, and one-year renewals for the remaining franchisees. This report found that Yellow Cab and the other franchisees recommended for full-term renewals were "in compliance with all terms and conditions of the franchise."[2]

A representative of the Teamsters Union appeared at the Council meeting of February 11, 1981, and spoke on the dispute between Yellow Cab and its drivers. This Teamster representative recommended that Yellow Cab not receive a franchise because of the labor dispute. As a result, the City Council postponed consideration of Yellow Cab's franchise, even though the City Council granted full-term franchises to the other taxicab companies recommended for full-term renewals and adopted its Committee's report, including the finding that Yellow Cab was in full compliance with all terms and conditions of its franchise.

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[2]These terms and conditions included (a) payment of franchise fees; (b) compliance with all rules regarding leasings/contracting operations; (c) the furnishing of waybills and dispatch records; (d) maintenance of the minimum number of vehicles required by franchise; (e) compliance with Affirmative Action provisions of the franchise.

Subsequently, on February 17, 1981, the City Council again considered whether to grant Yellow Cab a full-term, four-year franchise. Representatives of the Teamsters Union again appeared at this meeting and again opposed a franchise for Yellow Cab because of the pending labor difficulties. This resulted in the City Council's grant to Yellow Cab of a limited franchise extension until April 30, 1981, on the condition that the City Council found before March 27, 1981, that the ordinance providing limited extensions was "in the best interest" of the City. No other franchise grant was subject to this condition.

On February 17, 1981, the same date as the City Council meeting, the Teamsters told Yellow Cab that if the labor dispute was not settled, Yellow Cab was "going to have a lot of trouble" renewing the franchise. Thereafter, on March 22, 1981, the Teamsters told Yellow Cab that the Teamsters were going to see that the Yellow Cab franchise was not going to be renewed unless Union demands were met.

Subsequently, on March 23, 1981, the City Council met to determine whether it was in the "best interest" of the City to allow Yellow Cab the limited extension of its franchise and invited parties to "express their views." Yellow Cab urged the Council to grant the extension to avoid intervening in the labor dispute. The Teamsters, on the other hand, urged denial of the extension and contended that Yellow Cab was bargaining in "bad faith" with the drivers and that to grant a further extension would not be in the drivers' best interest.

At this meeting, a Teamster representative recited to the City Council the purported "modest" demands that the Union was making on Yellow Cab and outlined what he considered to be Yellow Cab's purported intransigence. This Teamster representative reported that the striking workers

had voted "to endorse the position that the franchise not be extended . . ." He further stated that he hoped that the present Yellow Cab employees "would be hired by whatever successors" were established for Yellow Cab. Also, an AFL-CIO representative, representing "the brothers and sisters" of the Teamsters, reminded the City Council that there were 700,000 union members in Los Angeles County, and claiming that Yellow Cab was "acting in bad faith," further urged denial of the franchise to Yellow Cab.

Of import to the scenario surrounding the City Council's treatment of Yellow Cab's application for a franchise renewal is the fact that a municipal election was scheduled for Los Angeles on April 14, 1981. Numerous members of the City Council of Los Angeles were involved in campaigns for reelection. Indeed, the President of the City Council stated at the meeting on March 23, 1981, that there was a "very good possibility" that Yellow Cab's franchise would lapse if the labor dispute was not settled "by the end of the week . . ." Thereupon the City Council denied Yellow Cab not only a renewal of its franchise but even the limited extension.

At no point in the franchise renewal proceedings was Yellow Cab notified that any evidentiary or fact finding hearing would be held to determine whether its franchise should be renewed. Yellow Cab was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced from the proceedings were, as noted, that Yellow Cab was in full compliance with all of the terms of its franchise. Under the terms of its Charter, the City of Los Angeles was required to have adopted an ordinance of general application establishing the procedural standards for granting the renewal of franchises. There were and are no established procedural standards for

renewal of taxicab franchises which Yellow Cab failed to meet.

In view of the conduct of the City Council, Yellow Cab filed a complaint in the United States District Court, Central District of California, on March 30, 1981, seeking a temporary restraining order, a preliminary and permanent injunction, declaratory relief and money damages. The District Court's jurisdiction was premised upon 28 U.S.C. §1331 in that certain of its claims arose under Article XI, §1 of the United States Constitution as well as upon 29 U.S.C. §§141-167, 151-168, 171-197 and 42 U.S.C. §§1983, 1985 and 1986 and 28 U.S.C. §2201. Thereafter, the District Court issued a preliminary injunction restraining and enjoining the City of Los Angeles, inter alia, from terminating Yellow Cab's franchise or allowing it to expire and from interfering with Yellow Cab's collective bargaining with its Teamster drivers. In support of its preliminary injunction, the District Court entered numerous findings of fact (See App. B).

The City of Los Angeles appealed to the Ninth Circuit Court of Appeals, and, in an opinion filed on May 7, 1982, a panel of the Ninth Circuit vacated the District Court's preliminary injunction and held that the District Court abused its discretion in granting the injunctive relief because, although the balance of hardships tipped "sharply in Yellow Cab's favor" Yellow Cab did not have a fair chance of success on the merits. The Court of Appeals' rationale was that the City of Los Angeles had not impermissibly interfered in a labor dispute, that Yellow Cab's opportunity for a franchise renewal did not rise to the level of a constitutionally protected interest so as to invoke the Due Process Clause, and that the City's differential treatment of Yellow Cab vis-a-vis other renewal applicants did not violate the Equal Protection Clause. (See App. A).

The Court of Appeals' opinion vacating the injunction was and is in error.

REASONS FOR GRANTING THE WRIT.

1. THE COURT OF APPEALS' DECISION HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS REGARDING THE REVIEW OF A LOWER COURT'S ISSUANCE OF INJUNCTIVE RELIEF.

The District Court found that, absent injunctive relief, Yellow Cab faced both substantial and irreparable harm — the loss of its business — whereas the City, by continuing with a fully qualified franchisee could suffer no hardship whatever by the granting of an injunction. Thus, since the District Court determined that this case presented "serious questions of public policy," it granted an injunction in accordance with the Ninth Circuit's rulings in *Benda v. Grand Lodge of the International Association of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978) and *Aguirre v. Chula Vista Sanitary Service*, 542 F.2d 779 (9th Cir. 1976).

In *Benda*, the Ninth Circuit ruled that its earlier standard for injunctive relief, that is *either* a combination of probable success and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in favor of the litigant seeking an injunction, was not really two distinct tests, but rather "merely extremes of a single continuum." With respect to this continuum, the Ninth Circuit held:

> "If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly."

Benda v. Grand Lodge of the International Association of Machinists & Aerospace Workers, supra, 584 F.2d at 315 (9th Cir. 1978).

In determining what a plaintiff must show as to the possibility of success on the merits when the balance of harm

tips decidedly toward the plaintiff, the Ninth Circuit reaffirmed its earlier view in the *Aguirre* case that the "irreducible minimum" would be met when "questions serious enough to require litigation" were presented.

In its opinion in this case, the Court of Appeals agreed that the balance of hardships tipped sharply in Yellow Cab's favor. For the purposes of this case, however, the Court of Appeals severed the continuum enunciated in *Benda* and *Aguirre* relative to a plaintiff's showing in support of an injunction, and inexplicably abandoned the irreducible minimum requiring only the presentation of questions serious enough to require litigation. In place of that aspect of the continuum, the court substituted the requirement that Yellow Cab carry the burden of showing a likelihood of success on the merits.

In the opinion of the Court of Appeals, the District Court abused its discretion in granting the preliminary injunction because Yellow Cab could not carry the burden, selectively applied in this case, of establishing that the City had unlawfully interfered with the ongoing collective bargaining between Yellow Cab and the Teamsters, or that the City's interference constituted a denial of due process and equal protection of the laws.

The Court of Appeals not only misapplied the Ninth Circuit's legal standard for injunctive relief, it further failed to follow well-established Ninth Circuit law in reviewing the sole issue before it, *i.e.*, whether the District Court had abused its discretion in granting the injunction. In fact, the Court of Appeals treated the issues in this case as if reviewing a District Court judgment on the merits. Contrary to the treatment of the injunction against the City of Los Angeles, the Ninth Circuit has consistently held that, unlike an appeal from a final decision on the merits, a more narrow standard of judicial review applies when an appellate court

is called upon to review the grant or denial of a preliminary injunction. See, *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1133 (9th Cir. 1979) and cases cited therein. As noted in the *Miss Universe* case:

> "After a final decision on the merits, we can closely examine the different variables which are relevant. . . . However, the more narrow abuse of discretion standard applies when we are called upon to review the grant or denial of a preliminary injunction.
>
> In cases such as the present one, in granting a preliminary injunction, the parties will not have had a full opportunity to either develop or present their cases, and the district court will have had only a brief opportunity to consider the different factors relevant. . . . That is one reason why this court generally limits its review to the more general determination as to whether the court below abused its discretion (citation omitted). *After all, the injunction is merely attempting to maintain the status quo pending the trial on the merits . . . Otherwise . . . we would be prejudging the merits before there was a decision by the district court.*" (emphasis added)

Miss Universe, Inc. v. Flesher, supra, 605 F.2d 1130.

Contrary to the Ninth Circuit rulings, the Court of Appeals' decision in this case overturns the status quo and effectively determines the merits of the litigation. By vacating the District Court's injunction, Yellow Cab faces economic ruin. On the other hand, the status quo ordered by the District Court presents no hardship to the City, inasmuch as the franchise of an entity found fully qualified by the City will continue, pending litigation and a final decision on the merits. Hence, it is not only appropriate but necessary that this Court exercise its power of supervision to correct the error of the Court of Appeals and prevent the irreparable and unconstitutional harm imposed on Yellow

Cab. Indeed the Court of Appeals' rationale, in vacating the injunction, is based upon its determination of several questions in conflict with applicable decisions of this Court.

2. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE DECISIONS OF THIS COURT REGARDING THE CONGRESSIONAL PROHIBITION AGAINST A LOCAL GOVERNMENT'S INTERFERENCE WITH LABOR DISPUTES.

This Court had consistently held that, under the preemption provision of the Supremacy Clause, state and local governments may not interfere with the free exercise of the collective bargaining processes established by Congress under the federal labor statutes. *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S. Ct. 2548 (1976); *A. K. Porter v. NLRB*, 397 U.S. 99, 90 S. Ct. 821 (1970); *American Shipbuilding Company v. NLRB*, 380 U.S. 300, 85 S. Ct. 955 (1965); *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*, 377 U.S. 252, 84 S. Ct. 1253 (1964); *Garner v. Teamsters, Chauffeurs & Helpers Union*, 346 U.S. 485, 74 S. Ct. 161 (1953).

In *Lodge 76*, this Court reaffirmed the limitations on state action where the parties to a labor dispute engaged in peaceful and lawful economic activities in furtherance of their bargaining demands. With respect to conduct not specifically protected or prohibited under the labor laws, this Court stated that it must determine from congressional intent what state action is still permissible in light of the federal statutes' preemption as to employer-employee activities that were left unregulated "to be controlled by the free play of economic forces". This Court observed in *Lodge 76* that a state may not impinge on an area of labor disputes designed to be free and unregulated because such state action would be as much an obstruction of federal policy as if the state were

to declare lawful certain labor activities that were prohibited by federal act. In noting that the resort to economic weapons is the right of the employer as well as the employee, the Court, quoting from its holding in *NLRB v. Insurance Agents*, 361 U.S. 477, 495, 80 S. Ct. 419, 430 (1960) stated:

> ". . . The economic weakness of the affected party cannot justify state aid contrary to federal law for, as we have developed, 'the use of economic pressure by the parties to a labor dispute is not a grudging exception [under] . . . the [National Labor Relations Act]; it is part and parcel of the process of collective bargaining.' "

In holding that a state could not interfere with a union's refusal to work overtime during a labor dispute, the Court in *Lodge 76* held that, although Congress had left such union conduct unregulated, the State's interference was impermissible:

> "The State action in this case is not filling 'a regulatory void which Congress plainly assumed would not exist.' (Citation omitted) Rather, it is clear beyond question that Wisconsin '[entered] into the substantive aspects of the bargaining process to an extent Congress has not countenanced.'
>
> Our decisions hold that Congress meant that these activities whether of employer or employees, were not to be regulable by states any more than the NLRB . . . Rather, both are without authority to attempt to 'introduce some standard of properly "balanced" bargaining power . . .' "

Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n, supra, 427 U.S. at 150-151, 96 S. Ct. at 2557.

Applying the foregoing constitutional analysis to the instant case, the District Court enjoined the City from terminating Yellow Cab's franchise because it found that the true purpose of the City was to influence the economic weapons of Yellow Cab and its Teamster drivers in the labor dispute — to the irreparable disadvantage of Yellow Cab. Thus, the District Court deemed the conduct of the City of Los Angeles to be an impermissible interference in the parties' labor negotiations in violation of the Supremacy Clause.

Although the Court of Appeals held that the effect of the City's conduct and not its motive was the only proper subject of judicial inquiry, it did acknowledge that one effect of the denial of Yellow Cab's franchise renewal "was to alter the balance of power in the collective bargaining dispute in favor of the Union . . . [and] that by threatening to deny and ultimately denying renewal of Yellow Cab's franchise, the city deprived Yellow Cab of an economic weapon — the opportunity to simply outlast the strikers." (App. A, at 2-3; 686 F.2d at 579).

Despite the City's interference with the economic balance between Yellow Cab and the Union, the Court of Appeals determined that the City's conduct was not preempted.

The Court of Appeals' rationale is in error because it is an artificial synthesis of this Court's statement in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244, 79 S. Ct. 773, 779 (1959) that preemption may not lightly be made where interests "deeply rooted in local feeling and responsibility" are affected and the Court of Appeals' view that under *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740, 749, 62 S. Ct. 820, 825 (1942), the use of streets and highways — and therefore the renewal of a taxicab franchise — is a "traditionally local matter" left to state and local regulation.

The Court of Appeals, however, misinterpreted and misapplied the principles noted in *San Diego Building Trades Council* and *Allen-Bradley*. By generalizing that "the use of streets and highways" is "deeply rooted in local feeling and responsibility" the Court of Appeals has created catch phrases of purported constitutional dimension. This Court's statement as to local interests in *San Diego Building Trades Council* and its holding in *Allen-Bradley* cannot be applied in a vacuum. In *San Diego Building Trades Council*, this Court cited certain of its prior decisions that, absent congressional direction, it could not infer that states lacked power to act where regulated employer-employee conduct touched interests deeply rooted in local feeling and responsibility. Yet, each of the decisions referred to in *San Diego Building Trades Council* concerned violent conduct that was destructive of peaceful labor relations and thus, because of public safety, regulable by the states.[3]

Clearly, this Court's rulings that preemption does not apply to interests deeply rooted in local feeling and responsibility concern a state's permissible power to control the safety of its citizens. In this case, the City had no such

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[3]The prior decisions of this Court noted in *San Diego Building Trades Council* are *International Union, United Automobile, Aircraft and Agricultural Implement Workers, etc. v. Russell*, 356 U.S. 634, 78 S. Ct. 932 (1958), where this Court held that a state had jurisdiction to entertain an action by an employee against a union for interfering through the use of force and intimidation with the employee's right to work; *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 78 S. Ct. 206 (1957), where this Court held that criminal conduct calculated to provoke violence, as opposed to peaceful picketing, could be restrained by the state; *United Automobile, Aircraft and Agricultural Implement Workers, etc. v. Wisconsin Employment Relations Board*, 351 U.S. 266, 76 S. Ct. 794 (1956), where this Court ruled that the states have power to enjoin violent union conduct during the course of a strike; and *United Construction Workers, etc. v. Laburnum Const. Corp.*, 347 U.S. 656, 74 S. Ct. 833 (1954), where it was held that a state had the power to entertain an employer's tort action resulting from a union's threats and intimidation.

concern, inasmuch as Yellow Cab had been found to be fully qualified to operate a taxicab service. The belated justification for the City's interference with the labor negotiations between Yellow Cab and the Teamsters was purely and impermissibly economic, *i.e.*, to increase the compensation of taxicab drivers.

In *Allen-Bradley*, this Court was also presented with a state's power to control violence during labor negotiations. In *Allen-Bradley*, a union engaged in mass picketing at the employer's premises and upon adjacent public streets. The picketing included threats and violence to individuals and property, as well as the obstruction and interference with the use of the public streets and sidewalks. Clearly, *Allen-Bradley* does not stand for the principle that a local government can interfere with the economic balance between an employer and its employees in a peaceful labor negotiation solely because the employer's business concerns the use of streets and highways.[4]

If the Court of Appeals' synthesis of the decisions in *San Diego Building Trades Council* and *Allen-Bradley* were to be upheld, any state or local government could interfere with the economic balance between labor and management as long as the employer's business concerned the use of streets and highways. Since in this case the City's sole justification for its refusal to renew Yellow Cab's franchise was to provide higher pay for its drivers, the Court of Appeals' decision would mean that any local government could totally condition the grant of any franchise to applicants that conform to organized labor's demands. The resulting control

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[4]The use of streets and highways is not solely a matter of local feeling and responsibility to avoid preemption. For example, as to the Commerce Clause, see *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962 (1959).

by a union of an employer's business would be repugnant to this Court's pronouncements that state governments cannot interfere with the economic give and take between labor and management.

3. THE DIFFERENTIAL TREATMENT BETWEEN PETITIONER AND OTHER FULLY QUALIFIED APPLICANTS HAS NO LEGITIMATE GOVERNMENTAL PURPOSE AND HAS DENIED PETITIONER EQUAL PROTECTION OF THE LAWS.

Although Yellow Cab and other franchises were deemed by the City to be fully qualified and in compliance with all terms and conditions of their franchises, and as a consequence, worthy of long-term franchise renewals, only Yellow Cab was denied a renewal. The differentiation between Yellow Cab and the other franchisees was based solely upon the labor dispute between Yellow Cab and its Teamster drivers. Further, prior to the City's ultimate refusal to extend Yellow Cab's franchise, Yellow Cab was the only franchisee reserved for a "temporary extension" and only Yellow Cab was subjected to the requirement of a "finding" that the granting of even that extension was in the "best interests" of the City. Such discrimination in treatment between similarly situated franchise renewal applicants clearly violated Yellow Cab's right to equal protection of the laws.

The wrongful action of the City of Los Angeles is particularly egregious for two reasons: (1) the City's interference in the collective bargaining process between Yellow Cab and the Teamsters to coerce Yellow Cab into yielding to the union's demands; and (2) the City's arbitrary and capricious establishment of the need for a "finding," without any standards, whereby the City could deny even a limited extension of the franchise if Yellow Cab refused to be coerced into settling with the union.

The Equal Protection Clause of the Fourteenth Amendment requires state and local governments to apply their laws uniformly to situations that cannot reasonably be distinguished. See, *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969); *Sturm v. California Adult Authority*, 395 F.2d 446 (9th Cir. 1967), cert. denied 395 U.S. 947, 89 S. Ct. 2021 (1969).[5] The Equal Protection Clause applies to the activities of city and local governments. See, *Hunter v. Erickson*, 393 U.S. 385, 89 S. Ct. 557 (1969).

In the instant case, Yellow Cab and the other franchisees were all similarly situated with respect to the legitimate objects and purposes of the law, *i.e.*, the franchise provisions of the City charter and ordinances. All of the companies had previous franchises, all of which expired on the same date. All of the companies applied for renewals, and they were all investigated by the same City government. All of the companies were found by the City's Department of Transportation, its Board of Transportation Commission and its City Council Committee on Transportation, and the City Council itself to be qualified for new franchises. A specific determination was made that Yellow Cab and four other franchisees be given new four-year franchises, inasmuch as all were in compliance with the City's terms and conditions. Thus, the City imposed no requirement which Yellow Cab failed to meet in the same manner and to the same degree as the other franchisees. Accordingly, there was no legitimate reason for treating Yellow Cab differently.

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[5]Article IV, Section 16 of the California Constitution is the substantial equivalent of the Equal Protection Clause of the Fourteenth Amendment. *Durham v. Los Angeles*, 91 Cal.App.3d 567, 154 Cal.Rptr. 243 (1979). The California provision requires, at a minimum, that persons similarly situated with respect to the legitimate purpose of the law receive like treatment. See, *Benjamin v. Ricks*, 63 Cal.App.3d 593, 132 Cal.Rptr. 758 (1976).

The District Court, in granting the injunction, found that the motivation of the City in treating Yellow Cab differently was to interfere impermissibly in Yellow Cab's labor dispute. The Court of Appeals, however, upheld the City's discrimination against Yellow Cab on the basis that the City had a legitimate governmental purpose in such interference, that is, "the assurance of adequate compensation for taxicab drivers," and thus better taxicab service. Notwithstanding the fact that the Court of Appeals recognized this purpose to have been belatedly asserted by the City (until after the discriminatory treatment of Yellow Cab had taken place), the court determined that it was a sufficient classification under the Equal Protection Clause.

Even if the City's belatedly asserted purpose is taken at face value, it still fails constitutional scrutiny. Indeed, this purpose is directly contrary to the prohibition against a state or local government's economic interference in the collective bargaining process. *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S. Ct. 2548 (1976).

Whether under the strict-scrutiny test or the rational-basis standard,[6] the City's purpose in discriminating against Yellow Cab is clearly impermissible. The City simply has no legitimate interest in disrupting the economic balance, to the employer's economic ruin, during a peaceful and lawful labor dispute. If the conduct of the City of Los Angeles can be justified, then employers throughout the nation who are affected from time to time with labor disputes, and who are required to meet various local requirements relating to business licenses, permits or franchises, will be forced to surrender to union demands in order to survive in business. If

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[6]Compare *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969) and *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153 (1970).

state and local governments can, whenever a labor dispute occurs, select those employers with whom they and organized labor will do business, the national scheme of labor relations will be destroyed.

The City's unfair classification of Yellow Cab in the franchise renewal proceedings vis-a-vis the City's classification of the other franchisees violated Yellow Cab's fundamental rights under the Equal Protection Clause.[7]

4. THE DIFFERENTIATION BETWEEN PETITIONER AND OTHER FULLY QUALIFIED APPLICANTS HAS DEPRIVED PETITIONER OF DUE PROCESS.

Because of its full compliance with City requirements and the findings of the City that Yellow Cab was fully qualified for a full-term renewal, Yellow Cab had a reasonable expectation of continuing business as a franchisee Such an expectation is an interest protected by the Fourteenth Amendment from deprivation without due process. See, *Graham v. Richardson*, 403 U.S. 365, 374, 91 S. Ct. 1848, 1853 (1971); see also, *Case v. Weinberger*, 523 F.2d 602 (2nd Cir. 1975).

In *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586 (1971), this Court held that such matters as licenses, when their continued possession becomes essential in the pursuit of livelihood, are constitutionally protected under the Due Process Clause whether their entitlement is denominated a "right" or a "privilege".

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[7]The City's differentiation between Yellow Cab and the other franchisees also violated Yellow Cab's rights under 42 U.S.C. §1983, which prohibits deprivation, under color of any statute, ordinance or regulation, the rights, privileges or immunities of the Constitution or federal law. Petitioner, a corporation, is entitled to the protection of §1983. See, *Advocates for Arts v. Thomson*, 532 F.2d 793 (1st Cir.), cert. denied 492 U.S. 894, 99 S. Ct. 254 (1976). The City of Los Angeles is subject to the prohibitions of §1983. See, *Owen v. City of Independence*, 445 U.S. 622, 100 S. Ct. 1398 (1980).

The Court of Appeals, however, held that Yellow Cab's expectation of a franchise renewal could only be considered a claim of entitlement under the Due Process Clause if defined by an independent source such as state or federal law. See, *Russell v. Landrieu*, 621 F.2d 1037, 1040 (9th Cir. 1980). The court then limited this independent source to state law or city ordinance. In noting that the Los Angeles City Charter provides that the City may grant franchises, the court held that the City could deny franchises even if the applicants met established eligibility requirements. Since the record before the Court of Appeals showed no City-created standards for renewal, the Court determined that the City's conduct did not deny Yellow Cab due process.

The Court of Appeals erred in limiting the protected entitlement under the Due Process Clause to a definition under state law or city ordinance. The fact that the City of Los Angeles may not have defined Yellow Cab's protectible interests by ordinance could not deprive Yellow Cab of due process protection. *Graham v. Richardson, supra; Bell v. Burson, supra.*

A franchise, like a license, need not be defined by local law to give rise to due process protection. For example, in *Hornsby v. Allen*, 326 F.2d 604 (5th Cir. 1964), an applicant for a liquor license met all requirements for being licensed, but the application was denied without any reason by local officials. The *Hornsby* court held that the fundamental requirements of due process are applicable to licensing proceedings and that the lower court should determine whether ascertainable standards governed the licensing and, if not, "enjoin denial of licenses under the prevailing system and until a legal standard is established" to provide for due process. *Hornsby v. Allen, supra*, 326 F.2d at 612.

The holding in *Hornsby v. Allen, supra*, is in accord with decisions of this Court and further demonstrates that Yellow

Cab need not have shown the existence of standards defined by the City for the franchise renewal. For example, in *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 2707 (1972), this Court upheld the dismissal of a college professor in a setting where there were no statutory or administrative standards defining eligibility for reemployment. However the Court noted that the state's action in that case did not deprive the professor from all public employment in state universities. Had this been the case, this Court observed that an entirely different matter would be presented under due process principles. In citing *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 185, 71 S. Ct. 624, 655 (Jackson, J., concurring), and *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238, 77 S. Ct. 752 (1957), the Court observed states cannot foreclose future opportunity.

Applying these principles to the instant case, it is clear that the City's conduct has completely deprived Yellow Cab of its business existence. Without a franchise, Yellow Cab will have no business and will be forced to liquidate its assets at a loss of as yet untold dimensions.

Furthermore, Yellow Cab has been deprived of another and distinctly different right, that is, its right to bargain freely with the Teamsters Union. The City's action and the decision of the Court of Appeals upholding that action have rendered Yellow Cab's right and ability to bargain with its union meaningless. That right and ability is protected by federal law.

Doubtless Yellow Cab has been denied substantive and procedural due process of law. As a franchisee, Yellow Cab has made a substantial investment in its business and has met all lawful terms and conditions for renewal of its franchise. Yet, it has been denied its business interest and its ability to bargain with its own union drivers by the capricious and arbitrary conduct of the City of Los Angeles.

CONCLUSION.

For the reasons stated above, a Writ of Certiorari should issue to review the opinion of the Court of Appeals for the Ninth Circuit.

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Respectfully submitted,

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